

² The record contains a March 7, 2019 OWCP decision in which OWCP denied appellant's request for review of the merits of the denial of her emotional condition claim. Appellant filed her appeal with the Board on December 10, 2018 and under the principles discussed in *Douglas E. Billings*, 41 ECAB 880 (1990), OWCP's March 7, 2019 decision, issued while the Board had jurisdiction over the matter in dispute, is null and void. See *J.R.*, Docket No. 18-1079 (issued January 15, 2019) (finding an OWCP nonmerit decision null and void because it was issued while the Board had jurisdiction over the matter in dispute).

ISSUE

The issue is whether appellant has met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On May 29, 2018 appellant, then a 69-year-old registered nurse, filed an occupational disease claim (Form CA-2) alleging that she sustained several emotional/stress-related conditions in the performance of duty, including depression, anxiety, increased blood pressure, and sleep deprivation. She asserted that she worked in a hostile work environment that exposed her to intimidation, hostility, and abuse. Appellant claimed that management gave her unreasonable work assignments, mishandled her leave requests, and wrongly denied her computer access to sick leave records. She asserted that she first became aware of her claimed condition on December 1, 2015 and first realized it was related to her federal employment on June 15, 2017. Appellant did not stop work.

By development letter dated June 14, 2018, OWCP requested that appellant submit additional evidence in support of her claim, including a physician's opinion supported by a medical explanation regarding the cause of her claimed emotional condition. It provided an attached questionnaire for her completion, which posed various questions regarding the employment-related incidents and conditions which she believed caused her claimed illness. OWCP afforded appellant 30 days to respond.³

In response, appellant submitted a September 28, 2018 statement in which she further discussed that incidents and conditions at work which she believed caused her emotional condition. She asserted that her prior attempt to file a workers' compensation claim in 2017 was improperly delayed by management. Appellant indicated that, after reporting symptoms of stress and depression to her immediate supervisor, S.R., she was referred to the Employee Assistance Program. She asserted that it was improper for S.R. to make the referral because the reported stress was employment related and not personal. Appellant asserted that she was the subject of an investigation by the employing establishment, but she was not informed of the allegations until she received instructions to appear at a meeting of the employing establishment's Administrative Investigation Board. She felt that management failed to present clear and compelling evidence during the meeting.

Appellant further claimed that on June 15, 2017 a management official, J.D., improperly removed her from office, took back facility keys, and informed her that her access to agency computers would be restricted. She maintained that S.R. wrongly directed a coworker to write a report of contact that was subsequently used in an administrative action relating to her performance. Appellant asserted that she was improperly suspended for one week without pay for refusing to open an employee gymnasium due to her concerns that the gymnasium contained

³ On June 14, 2018 OWCP also requested additional information from the employing establishment which was to be submitted within 30 days. There is no indication that the employing establishment responded to the request within the allotted time.

health/safety violations.⁴ She claimed that management subjected her to retaliation and discriminated against her by threatening to eliminate her position due to her refusal to open an employee gymnasium. Appellant claimed that management failed to adequately respond to her health/safety concerns due to the fact that the coworker next to her kept dirty clothes in his work space.

Appellant submitted several e-mails and memoranda detailing communications she had with management and union officials in 2016 and 2017. In these documents, she expressed her concerns about such matters as her request for mediation with a management official regarding an administrative action and a perceived delay in management's handling of her prior workers' compensation claim.⁵ Appellant also submitted numerous low-quality black and white photocopies of photographs depicting her work area.

Appellant submitted several medical reports in support of her claim, including a June 28, 2018 report of Dr. Mina W. Ma, an attending Board-certified internist, and August 2, 2017 and May 22, 2018 reports of Dr. Jeffrey R. Spina, another attending Board-certified internist.

By decision dated November 9, 2018, OWCP denied appellant's emotional condition claim, finding that she had not established a compensable employment factors.⁶

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁷ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁸

A claimant has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the condition for which he or she claims compensation was caused or

⁴ Appellant asserted that management threatened her with discipline after she refused to open another employee gymnasium.

⁵ Appellant also submitted a July 2016 memorandum in which a coworker detailed his concerns about the cleanliness of her work space.

⁶ In a portion of the decision, OWCP indicated that appellant established employment factors and advised that her claim was denied for failure to establish injury in the performance of duty. However, appellant's claim was actually denied due to her failure to establish any compensable employment factors as OWCP provided a detailed discussion of why she failed to establish such factors.

⁷ *Lillian Cutler*, 28 ECAB 125 (1976).

⁸ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

adversely affected by employment factors.⁹ This burden includes the submission of a detailed description of the employment factors or conditions which he or she believes caused or adversely affected a condition for which compensation is claimed, and a rationalized medical opinion relating the claimed condition to compensable employment factors.¹⁰

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship, and which working conditions are not deemed factors of employment and may not be considered.¹¹ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

Appellant alleged that she sustained an emotional condition due to various incidents and conditions at work. The Board must initially review whether these incidents and conditions are covered employment factors under the terms of FECA. The Board notes that appellant's claim does not directly relate to her regular or specially assigned duties under *Lillian Cutler*.¹³ Rather, appellant primarily claimed that management committed error and abuse with respect to various administrative/personnel matters. She also claimed that management subjected her to harassment and discrimination.

The Board notes that with respect to administrative or personnel matters, appellant claimed that management officials improperly delayed a prior workers' compensation claim she filed in 2017 and mishandled an investigation against her which included a meeting with the employing establishment's Administrative Investigation Board. Appellant claimed that the employing establishment improperly disciplined her regarding her refusal to open an employee gymnasium, ignored her health/safety concerns about her work space, gave her unreasonable work assignments, mishandled her leave requests, and wrongly restricted her computer access. She also claimed that her immediate supervisor, S.R., mishandled her referral to the Employee Assistance Program and

⁹ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹⁰ *P.B.*, Docket No. 17-1912 (issued December 28, 2018); *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹¹ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹² *Id.*

¹³ *See supra* note 7.

improperly directed a coworker to write a report of contact that was subsequently used in an administrative action relating to her performance.

The Board has held that administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.¹⁴ However, the Board has also held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.¹⁵ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.¹⁶

The Board notes that appellant did not submit sufficient evidence to establish the above-noted claims about administrative/personnel matters. She submitted e-mails and memoranda which concerned some of these administrative/personnel matters, but the communications did not show that the employing establishment committed error or abuse with respect to these matters.¹⁷ There is no indication that appellant filed a grievance with the employing establishment regarding these matters or otherwise obtained a final determination from an administrative body showing that the employing establishment committed error or abuse. Although appellant has expressed dissatisfaction with the actions of several superiors, the Board has held that mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor.¹⁸ She did not substantiate any error or abuse committed by the employing establishment in the above-noted matters and therefore she has not established a compensable employment factor with respect to administrative or personnel matters.

Appellant asserted that management officials created a hostile work environment that exposed her to intimidation, hostility, and abuse. She also claimed that management officials subjected her to retaliation and discriminated against her by threatening to eliminate her position due to her refusal to open an employee gymnasium. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.¹⁹ The Board has held that unfounded perceptions of harassment do not constitute an

¹⁴ *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹⁵ *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *William H. Fortner*, 49 ECAB 324 (1998).

¹⁶ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁷ Appellant also submitted numerous low-quality black and white photocopies of photographs depicting her work area. She ostensibly submitted the photocopies to support her claim that the employing establishment ignored her health/safety concerns about her work area. However, the submission of these documents would not be sufficient to show that the employing establishment committed error or abuse with respect to this matter.

¹⁸ *T.C.*, Docket No. 16-0755 (issued December 13, 2016).

¹⁹ *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

employment factor.²⁰ Mere perceptions are not compensable under FECA and harassment can constitute a factor of employment if it is shown that the incidents constituting the claimed harassment actually occurred.²¹

Appellant did not submit substantive evidence to establish her claims of harassment or discrimination. For example, she did not submit witness statements showing that the claimed harassment/discrimination actually occurred. In addition, appellant did not submit the final findings of any grievance or complaint she might have filed with respect to these matters, such as a grievance filed with the employing establishment or a complaint filed with the Equal Employment Opportunity (EEO) Commission.²² Therefore, she has not established a compensable employment factor with respect to the claimed harassment and discrimination.

For these reasons, the Board finds that appellant has not established a compensable employment factor. Given the Board's finding on the factual aspect of her case, it is not necessary to consider the medical evidence of record.²³

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

²⁰ See *F.K.*, Docket No. 17-0179 (issued July 11, 2017).

²¹ See *id.*

²² Appellant indicated that she had filed a grievance and an EEO matter, but there is no final decision in either matter showing that error and abuse actually occurred. See *M.R.*, Docket No. 18-0304 (issued November 13, 2018).

²³ See *B.O.*, Docket No. 17-1986 (issued January 18, 2019) (finding that it is not necessary to consider the medical evidence of record if a claimant has not established any compensable employment factors). See also *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the November 9, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 10, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board